

05-0903  
Audit  
Signed 12/13/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER FROM INITIAL HEARING</b>
	)	
Petitioner,	)	
	)	Appeal No. 05-0903
v.	)	
	)	Tax Type: Income Tax
AUDITING DIVISION OF THE UTAH)	)	
STATE TAX COMMISSION.,	)	Audit Period: 2002
	)	
Respondent.	)	Presiding: Rees

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**Presiding:**  
Irene Rees, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER REPRESENTATIVE, Attorney for Petitioner  
For Respondent: RESPONDENT REPRESENTATIVE 1 and RESPONDENT REPRESENTATIVE 2, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Telephonic Status Conference on November 21, 2005. Because the only issue pending is Petitioner's request for waiver of penalty, the conference was converted to an Initial Hearing.

An assessment was issued against Petitioner for the 2002 tax year. Petitioner paid the assessment of tax, and Petitioner's representative stated they were prepared to mail a check for the interest. Petitioner asked for a waiver of the late filing and late payment penalties.

Petitioner sold property on a real estate installment contract and paid Utah tax on that income while he resided in Utah. Petitioner remarried and moved to STATE in 2002. In 2002, he received a substantial balloon payment. Petitioner's tax preparer advised him that there was no

need for him to file a 2002 Utah return because he had changed his domicile to STATE. Upon receiving this assessment, Petitioner contacted PETITIONER REPRESENTATIVE, his attorney in this matter. PETITIONER REPRESENTATIVE instructed Petitioner that he must file and pay Utah income tax on this Utah based income. Petitioner also sold Utah property in tax years 2003 and 2004. Although those years have not been audited, Petitioner has taken steps to file returns and comply with Utah law. Petitioner asks for an abatement of the penalties imposed with the 2002 assessment and any penalties associated with 2003 and 2004 returns.

#### DECISION AND ORDER

The Commission has discretion to waive penalties for reasonable cause. In this case, Petitioner states that he relied on erroneous advise from a professional tax preparer. As soon as Petitioner became aware of his error, he immediately took steps to pay the tax and interest. Petitioner also took steps to file returns for tax years 2003 and 2004, which are not the subject of this audit. There is no evidence that Petitioner has been anything but a compliant taxpayer over the years, and he has supplied reasonable cause to support abatement of the 2002 penalty assessment.

Although the 2003 and 2004 years are not before us here, we note that any penalties associated with Petitioner's 2003 and 2004 returns arise from the same circumstances as the applied to the 2002 year and the same consideration warrants relief from those penalties, should they be assessed. Therefore, we agree that Petitioner is entitled to a waiver of the penalties for tax years 2003 and 2004.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a

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Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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Irene Rees  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

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